Supreme Court, U.S.
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No. 99-827

In The

Supreme Court of the United States

ROBERT V. STEINHILBER,

Petitioner,

v.

MICHAEL S. McFARLAND, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT PETITIONER WAS NOT DENIED A RIGHT TO A JURY TRIAL IN THE DISTRICT COURT AS THE REMEDIES SOUGHT AND GRANTED AGAINST HIM WERE EQUITABLE IN NATURE?

LIST OF PARTIES

Robert V. Steinhilber, Petitioner; Johnita F. Steinhilber, co-defendant; Winnebago South, Inc., a Missouri corporation, co-defendant; Michael S. and Donna C. McFarland, Robert F. and Cheryl Morgan, Norman R. and Phyllis A. Cates, Wayne E. and Annabell Lasley, Richard A. and Bonnie L. LaPointe, Glen G. and Opal Pittman, G.H. and Harriett L. Ricker, Orson A. and Glenna M. Rau, Gary and Carolyn Sue Spears, Paul and Juanita L. Schafer, Robert J. and Anna E. Schumacher, Christ and Sophia Skiriotis, S.N. and Irene P. Whitcanack, Arthur and Kathleen Zago, Respondents.

CORPORATE DISCLOSURE

There are no parent corporations involved, and there are no publicly held companies involved, only the privately held corporation, co-defendant Winnebago South, Inc.

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OPINIONS BELOW

The Opinions below are attached to petitioner's Petition at appendices 1, 2 and 3.

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on August 11, 1999. A Petition for Rehearing was filed and the Order denying the Petition was entered September 16, 1999. Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner adequately sets forth the constitutional and statutory provisions involved in this Petition.

STATEMENT OF THE CASE

This appeal comes before this Court after a long and tortuous legal path. This case was originally filed in December of 1971. The fundamental claim made in this case is based upon the Interstate Land Full Disclosure Act ("ILSA"), 15 U.S.C. § 1703, *et seq.* ILSA became effective April 28, 1969. Petitioner Robert V. Steinhilber ("RVS") and his wife, co-defendant Johnita F. Steinhilber ("JFS") and their company, Winnebago South, Inc. ("WSI"), were developing a real estate subdivision and thereafter filed a Statement of Record and Property Report (the "Property

Report") pursuant to the requirements of ILSA. The development failed, this case was filed and the Court appointed a Receiver of WSI's assets.

On March 7, 1973, this case was designated to proceed as a class action under Rule 23(b)(1) and (2), FRCP. The class was later redefined to those persons who purchased lots between April 28, 1969 and October 22, 1971.

Discovery proceeded, and after a significant delay in the prosecution of the case, motions for partial summary judgment filed by virtually all of the parties were briefed and heard by the District Court. The District Court ruled on the summary judgment motions, making certain determinations from which RVS and JFS appealed, and the matter thereafter eventually (and finally) went to a jury trial. The District Court presided over a twenty-eight day jury trial (conducted between November 16, 1995 and February 13, 1996) which resulted in a verdict against RVS on all five counts related to him and against JFS on four out of five counts related to her. After numerous post-trial motions, the District Court filed its Judgment in a Civil Case on March 14, 1997, which was entered on March 19, 1997. RVS thereafter filed a Motion For Judgment As A Matter Of Law under Rule 50(b), FRCP, or, in the alternative, for a New Trial, under Rule 59, FRCP. JFS only filed a Motion for Judgment as a Matter of Law. The District Court denied both motions on June 30, 1997 (Docket #598). On July 24, 1997 RVS and JFS filed Notices of Appeal to the Eighth Circuit. The appeals were briefed by RVS separately, but plaintiffs filed a consolidated brief and the Court of Appeals issued its opinion affirming the

District Court's actions on August 11, 1999. On September 16, 1999, the court entered an Order denying RVS's Petition for Rehearing.

ARGUMENT

I. RVS's PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

RVS's Petition for a Writ of Certiorari is just the latest chapter in this unfortunate piece of litigation which has trudged through the courts for the past twenty-eight years. Like almost everything else filed by RVS, the Petition has no merit. RVS claims that three bases support the granting of the Petition, all of which allegedly deal with the lower court's denial of his right to a jury trial (despite having a twenty-eight day jury trial). An examination of RVS's brief to the Eighth Circuit reveals that the true dispute that he has with the District Court and now the Eighth Circuit is the District Court's use of certain stipulated facts in making pretrial rulings, which in turn had the effect of taking undisputed factual issues away from the trier of fact. Consequently, only equitable issues remained. The Eighth Circuit then correctly ruled that "the Steinhilbers were not denied their right to a jury in the district court, as the remedies sought and granted against them were equitable in nature. *See, Kerr v. Charles F. Vatterott & Co.*, No. 98-1677, 1999 WL 493996, at 5 (8th Cir. July 12, 1999) [now found at 184 F.3d 938]; *Tri-State Hotels, Inc. v. FDIC*, 79 F.3d 707, 715 (8th Cir. 1996)." The court then found that it was unable to review any of the other fact-based claims raised by RVS and JFS because the

Steinhilbers failed to submit the *necessary* transcripts pursuant to Fed.R.App.P. 10(b)(2).

The issues raised by RVS in his pro se brief before the Eighth Circuit were frankly difficult to decipher. Plaintiffs believe the issues raised by RVS to be as follows:

I. Whether The District Court Erred In Its Pretrial Ruling Wherein It Found That Certain Proposed Factual Stipulations Were Binding Upon RVS In Part Because Of The Alleged Failure Of RVS's Attorney To Contest The Same?

II. Whether The District Court Erred In Making Certain Additional Pretrial Factual Findings Based In Part Upon The Above Referenced Factual Stipulations?

III. Whether The District Court Erred In Its Pretrial Ruling Wherein It Found That Certain Proposed Factual Stipulations Were Binding Upon RVS When Certain Stipulations Were Allegedly "Clearly Erroneous"?

IV. Whether The District Court Erred In Making Certain Factual Findings Based Upon The Alleged "Tainted" Testimony Of The WSI Receiver And "Other Evidence" Offered By Plaintiffs Which Was Allegedly "Clearly False" Or "Clearly Erroneous"?

V. Whether The District Court Erred In Instructing The Jury The RVS Had "Agreed" To The Above Referenced Factual Stipulations And In Permitting Plaintiffs To Do Likewise?

VI. Whether The District Court Erred In Admitting Certain Testimony Over RVS's Objections?

VII. Whether The District Court Erred In Refusing To Admit Certain Testimony Offered By RVS?

VIII. Whether The District Court Improperly Made Pretrial And Trial Rulings Which Limited RVS's Ability To Present A Proper Defense?

IX. Whether The District Court Erred In Its Instructions To The Jury?

X. Whether The District Court Erred In Denying RVS's Motion For Judgment As A Matter Of Law And Motion For A New Trial?

Significantly, RVS *never* specifically raised the jury trial issue which is now the focus of the Petition. JFS did, however, raise the issue in her brief to the Eighth Circuit, which provided the impetus for the court's ruling on the jury trial issue. Consequently, RVS raises the issue for the first time in his Petition – which obviously is improper. *See, Grupo Mexican de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 119 S.Ct. 1961 (1999); *National Collegiate Athletic Association v. Smith*, 119 S.Ct. 924 (1999); *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 118 S.Ct. 1952 (1998); *Ohio Forestry Association v. Sierra Club*, 523 U.S. 726, 118 S.Ct. 1665 (1998); and, *Blessing v. Freestone*, 520 U.S. 329, 117 S.Ct. 1353 (1997).

As was stated above, RVS's real objection with the rulings of the District Court and now the Eighth Circuit is the District Court's use of certain stipulated facts in making pretrial rulings, which in turn had the effect of taking undisputed factual issues away from the trier of fact. This dispute clearly does not rise to the level required by Supreme Court Rule 10. The Court of Appeals has not entered a decision in conflict with another Circuit or with this Court nor does the court's decision call for an exercise of this Court's supervisory powers. As such, the case is not a candidate for the issuance of a writ of certiorari.

II. THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW

Pursuant to Supreme Court Rule 15(2), Respondents are required to address any perceived misstatement of fact or law in the Petition that bears on what issues properly would be before the Court if certiorari were granted. The state of the record on appeal in this case, which is virtually non-existent by reason of RVS's failure to provide the necessary transcripts for appellate review, makes it difficult to address all of the misstatements of fact and law contained in the Petition. Nevertheless, the *primary* misstatements are as follows:

1. At page 4 of the Petition, RVS gratuitously and falsely states, "Respondents prosecuted the action on an occasional basis only; it had no merit. At one time Plaintiffs' lead attorney stated his law firm had filed the case to gain experience in class action lawsuits, which were then (1971) becoming popular with attorneys." This statement is obviously false. The case was filed to seek redress for the wrongs committed by RVS and others against the plaintiff class.

2. At page 4 of the Petition, RVS falsely states: "At the time this lawsuit was filed, WSI was not delinquent in any way, shape, or form, i.e., not in regards to financial *or* developmental obligations." The trial court's pretrial findings, by way of *stipulated* findings of fact, clearly rebuts RVS's statement. The court's findings are replete with examples. For instance, the case was initially filed on December 23, 1971. On October 22, 1971, things had deteriorated to the point that HUD was compelled to

issue an Order of Suspension directing a halt in all sales of property in the development.

3. At page 5 of the Petition, RVS also falsely states that plaintiffs sought and obtained the appointment of a receiver, yet "no evidence was ever produced to substantiate their allegations". Again, RVS's statement ignores the trial court's voluminous pretrial findings of fact, which are supported by facts found to have been *stipulated* to by all of the relevant parties.

4. At page 9 of the Petition, RVS seeks the Court's sympathy for proceeding herein pro se, "because he is almost 74 years old and his social security benefits provide his only income". RVS does not disclose the fact that his spouse is an actively practicing, licensed attorney.

CONCLUSION

WHEREFORE, for the reasons stated above, respondents respectfully pray this Court deny RVS's Petition for a Writ of Certiorari.

Respectfully submitted,

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